MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard • Baltimore MD 21230
410-537-3000 • 1-800-633-6101

May 7, 2007

Mr. Christopher Diez
AES Sparrows Point LNG, LLC
140 Professional Way, Suite A
Lockport, NY 14094

RE: Application Tracking Number: 200761377/07-NT-0125/07-WL-1301
AES Sparrows Point LNG & Mid-Atlantic Express LLC/Dredging and Pipeline

Dear Mr. Diez:

The Wetlands and Waterways Program (WWP) of the Water Management Administration has completed its initial review of the *Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland* for the above referenced project. The application is being reviewed as a component of the AES Sparrows Point LNG, LLC (hereafter AES) application for authorization under the State's Coastal Facilities Review Act.

The State's wetlands and waterways review was conducted in accordance with COMAR 26.17.04 (Waterway Construction), 26.23.04 (Nontidal Wetlands), 26.24.02 (Tidal Wetlands) and 26.08.02.10 (Water Quality Certification) (1996 Replacement Volume). WWP has determined that your joint Federal/State application is incomplete. The following information is necessary for WWP to continue processing the application.

In general, the activities/project descriptions contained within the Resource Reports are numerous vague and not site-specific. Please note that in order to review the proposed activities properly, specific descriptions of proposed actions will be required. At this time, the following comments/information requirements need to be addressed:

1. It appears that the Resource Reports submitted with the application are not complete. Specifically:
    a. Appendices A-V for resource report 13 (Vol V-A, Vol V-B, Vol B-C) and Appendix U1 were not included and yet were referenced in the reports.
    b. MDE received 5 additional copies of the resource reports in late April, of which, one set of the resource reports was missing binder IV-A (non-internet public).
    c. Please clarify: Is there a binder for Vol I?

2. Please provide figures on 8.5" x 11" paper that can be easily copied and shared with various agencies or interested persons. Aerial photos with colorful lines depicting various aspects of the project are not easily copied. Black and white line drawings are preferred.

3. Please submit full-size project plans for the complete project.

4. Pipeline alignment sheets should be numbered for easy reference.

5. Page 7 of Resource Report 1 states, "*AES has an option to lease the Terminal Site with the current owner of the Sparrows Point Shipyard*". Please provide documentation of the option. The documentation should adequately show that AES has permission from the property owner to construct the proposed project.

6. Figure 1C-2 shows a typical dredged material recycling facility (DMRF) but not the proposed layout. Provide a similar figure representing what is proposed at Sparrows Point and where it is located.

7. Indicate dredging rates in relation to the capacity of the DMRF and storage facility and how much can be taken offsite. The resource reports state that up to 10,000 cubic yards of material could be dredged per day, and last approximately 18-24 months, and that processed dredged material (PDM) can be transported off-site at approximately 5,000 cubic yards/day. This latter figure is only half of what is removed each day. How much dredged material can be stored at one time in the concrete pad storage area (10-acre area) after it goes through the pugmill system? How much processed material can be stored at the additional storage area (20-acre site)? Who owns the 20-acres site? If AES is not the owner, provide documentation that states this area will be accessible to AES.

8. After the dredged material goes into the receiving hopper and scalping screen, where does the excess water go?

9. The application mentions that after the PDM has been tested and determined to be structurally suitable, the material will be used for other projects. What does structurally suitable mean? What standards will be used to determine that the material is structurally suitable and acceptable for other uses?

10. Who will make the determination on what to add to remove the contaminants during the pugmill process? Will the material be analyzed after going through the process to make sure it's clean? Are all of the contaminants found in the soil samples able to be decontaminated through the DMRF? What is the alternate plan for the material that is unsuitable for reuse (the material that is not successfully decontaminated)? Please provide an estimate of the amount of material that will be unsuitable for reuse.

11. The application states PDM will be shipped offsite once sold. Is the PDM dry when it is finished going through the pugmill system? If not, the PDM will have to be transported in watertight/sealed trucks to eliminate spills on roadways.

12. The figure showing the process and treatment equipment profile from CleanEarth does not show the dewatering process for the dredged material. The application mentions that there will be a possible onshore treatment facility to remove contaminants from the water before returning it to the waterway. Provide a similar figure showing the dewatering process on the barge and the onshore treatment facility. Also, please indicate where the treatment facility will be located. If either of these two methods are not feasible, agreements with one of the offsite disposal facilities would be required by MDE.

13. In Appendix 1C, page 6 states "anticipated location alternatives for the DMRF relative to the dredge area and the Terminal are shown." Where are they shown? MDE does not have a copy of a figure that depicts this.

14. There is no mention of a bulking factor for the dredge material. A bulking factor is how much the material will increase in volume during dredging and disposal operations based on material composition, material water holding capacity, and dredging method (see COMAR 26.24.03.04). For mechanical dredging, a bulking factor of 1.4 should be considered. Has this been included as a consideration in the proposed processing times and storage abilities?

15. Appendix 1C, page 3 states that the dredging plan will be updated with current information on dredge layout (width, length, location of dredging, etc.). A copy of the final dredging plan must be submitted to WPP before a final decision can be made as to whether or not to approve this part of the project. BWI Sparrows Point recently dredged and completed a depth survey near the proposed dredging area. In the application and resource reports, AES estimates dredging anywhere from 3-4.5 million cubic yards of material. Using the BWI depth survey or your own survey, provide a revised depth survey figure and update the amount of material that will be dredged by AES.

16. The resource reports discuss the removal of aquatic vegetation; please expand on this discussion. What do you mean when you talk about removing aquatic vegetation? Is there any in the area? Indicate where any submerged aquatic vegetation is located in relation to the dredge area and the adjacent areas that might be affected by the dredging operations. Provide the date of the survey and the method of sampling.

17. Over-depth of dredging will not be approved. Dredging would only be allowed at the required depth needed for safe passage of the LNG ships. Is 45 feet the depth needed to allow for safe passage of the ships?

18. Provide a description for predicted short-term and long-term impacts of dredging activities on water circulation, water quality, tidal wetland values, and aquatic biota.

19. Provide a cross section of the dredged area showing the side slopes, existing water depths, proposed water depths, etc.

20. The plans mention ocean dumping is being investigated further. Please provide additional information on this investigation.

21. The text states that the approach channel is 440 ft wide but does not specify the length. Please provide the length of the approach channel in feet.

22. Indicate the area near shore that you are proposing to excavate by backhoe dredge.

23. Provide a figure to clarify where the existing bulkhead is in relation to the proposed new bulkhead. What is the maximum channelward encroachment from the mean high water line? Indicating the different types of bulkheading being proposed on this figure. Also, provide a cross section of the new bulkhead.

24. Provide a figure showing which piers will be removed.

25. Describe how pier pilings would be repaired.

26. Indicate how many aids to navigation will be used and the location of each.

27. The joint Federal/State application submitted for this project does not include all state regulated resources. While the application discusses impacts to waters and wetlands, it does not adequately address impacts to the 100-year nontidal floodplain and nontidal wetland buffers. The 100-year floodplain and 25-foot buffer (an expanded 100-foot buffer for Nontidal Wetlands of Special State Concern) are both regulated as described in COMAR 26.17.04 and COMAR 26.23.02.

    a. The alignment sheets should be modified to include floodplain and buffer lines;

    b. Additional tables should be provided that list the location and extent of impacts to nontidal wetland buffer and the 100-year floodplain. Alternatively, Table 2.5-1 may be revised to include these impacts.

28. The location of all wetlands, wetland buffers, waters and floodplain impacts must be field verified by MDE staff. MDE field work will be coordinated with the U.S. Army Corps of Engineers (Corps).

29. The project application does not sufficiently address avoidance and minimization efforts in regard to State regulated resources. Further documentation and discussions will be necessary on this matter.

30. Resource Report 2, page 11, states "*AES has evaluated selected critical waterbodies for crossing using the HDD method, consistent with the request by National Marine Fisheries Service (NMFS)...The Gunpowder Falls, Deer Creek and Octoraro River crossings can be preformed utilizing other techniques, as described in Section 2.4.1, while still ensuring that protective environmental impacts have been avoided or minimized*". Please provide documentation on how this evaluation was completed and whether NMFS has concurred with AES's determination.

31. In locations where streams and wetlands are adjacent, estimated impacts need to be separated and quantified. For example, on the pipeline alignment sheet covering milepost 0.0 to 1.2, Humphrey Creek is shown to have wetlands on both sides of the stream; however, the entire area is called NWI wetland. For review purposes, the diagrams should show the width of the waterway at the crossing and separately the width of the wetland. This is necessary so that the impact is counted twice. Please review and if necessary revise Table 2.5-1.

32. Resource Report 2, page 45, states "*the proposed Pipeline Route only crosses one NTWSSC, which occurs at mile post 22.22 to 22.23 on Wild Cat Branch, a stream located within Gunpowder Falls State Park*". Impacts to Nontidal Wetlands of Special State Concern should be avoided if at all possible. WWP will require that wetland impacts at this location be avoided by utilization of horizontal directional drilling.

33. Resource Report 2, page 45, states "*The construction technique used to cross wetlands with stable, unsaturated soils at the time of construction will be similar to those used in*

dry upland area. Soils may be dry and stable enough to support equipment without additional timber mat/riprap support...". Please note that if the proposed impacts are authorized, wetland mats will be required for all wetland crossings, regardless of the saturation state of the soils.

34. Table 2.5-1 includes a column specifying "Proposed Crossing Method" for wetland crossings by the project that states "BMP 23 or 34" will be utilized. Upon examination of Appendix 2B, there is no BMP 34 included (although BMP 24 is a wetland crossing diagram). Please revise Table 2.5-1 to reflect the correct BMP or provide the missing BMP 34.

35. The diagrams for BMP 23 and BMP 24 should be revised to show the 25-foot nontidal wetlands buffer.

36. Tables 2.4-1, 2.5-1and 2.5.2-1 should be revised to include subtotals for resource impacts within Maryland and within Pennsylvania.

37. Resource Report 2, page 8, states "*If the water being discharged from the filter bag appears "milky" or excessively cloudy, then corrals will be positioned at least 25 feet from any waterbody and closely monitored to ensure proper function*". This qualitative standard is open to subjective interpretation and is not specific enough to protect natural resources. A quantitative standard should be utilized and supporting materials should be revised to reflect that standard. Any discharge must meet the State's water quality standards.

38. WPP has developed a set of "Best Management Practices for Working in Nontidal Wetlands". These BMPs are a required component on final plans that include wetland, buffer, floodplain and/or waters impacts. A copy of the WPP BMPs is attached.

39. Please provide additional information on the proposed use of trench breakers which demonstrates that the use of such components will protect regulated resources.

40. Please note that stockpiling of material and staging of construction activities is not permitted in nontidal wetlands, nontidal wetland buffers, waterways or the 100-year floodplain. Within the confines of these State regulated resources, only the length of surface that can be completed on a single day should be opened.

41. Resource Report 2, page 11, states "*Under conditions of stream flow, dry non-specified methods would be implemented at the contractor's discretion, and with the approval of AES's environmental inspector*". As stated in comment 28 above, MDE staff will be inspecting every crossing that includes proposed impacts. Based upon field observations, WPP staff will make a case-by-case decision as to what specific crossing is to be utilized at each site. Following the field visit, AES will be notified as to whether any of the crossings may be left to contractor's discretion.

42. Resource Report 2, page 46, states "*AES will attempt to use no more than two layers of timber rip-rap or prefabricated timber mats within the work area to stabilize the ROW*". WPP does not recognize timber rip-rap as a standardized method of stabilizing a work area. Please provide more details on this method so that the effectiveness may be evaluated or remove it from the project documentation.

43. A Phase-1 Mitigation Plan is required for an application to be deemed complete. It is recommended that AES contact the WWP's Mitigation and Technical Assistance Section to explore mitigation options.

44. In accordance with Title 5, Subtitle 5, §5-204, Environment Article, Annotated Code of Maryland, you are required to serve notice of your application to owners of property contiguous to the pipeline corridor upon which the proposed project will occur, and located in or bordering on the 100-year floodplain. In addition, you must notify the appropriate local officials of any affected city or the appropriate county. *The notice must be served personally or by certified mail, and must include the location and a description of the project.* Attached are a sample letter for your use, and a Certification of Notification, which must be submitted in order to complete your application.

45. Processing of the application for authorization by the State of Maryland includes the advertisement of a public notice to allow for public comment and the opportunity to request a public hearing. It will be the applicant's responsibility to pay for advertisement in the Baltimore Sun and the Washington Post. Please complete and return the enclosed Public Notice Billing Approval Form. Also, please include a MS Excel file with the adjacent property owner list (each field should be a separate column).

46. A preliminary screening of the application showed the proposed route of the pipeline to be in close proximity to known sensitive and endangered species, Nontidal Wetlands of Special State Concern, and historically significant resources. Accordingly, the Maryland Department of Natural Resources (DNR) and the Maryland Historical Trust (MHT) are also reviewing the application. Any additional comments from them will be sent under separate cover. (*Please note, in situations where proposed projects are in close proximity to known significant historical and ecological resources, WWP standard procedure requires DNR and MHT to provide a letter of concurrence prior to a decision on the application*).

Please provide the requested information and reference the application tracking number on all correspondence pertaining to this project. A copy of any information furnished to WWP should also be sent to the Corps. As soon as this information is provided, the review of your application will be promptly continued. If we do not hear from you within 120 days of the date of this letter, it will be assumed that you are no longer pursuing authorization for your project. Processing of your application will be suspended, and the application will be returned to you and considered to be withdrawn. If you then wish to pursue authorization for your project, it will be necessary to submit a new joint State/Federal application to the Regulatory Services Coordination Office. The application will receive a new tracking number, and will be evaluated based on the regulations and policies in effect on the new receipt date.

If you have any questions, you may contact me at (410) 537-3763, Ms. Tressa Ellis at (410) 537-4023 concerning the proposed dredging and dredged material disposal, or Ms. Elisha Wakefield at (410) 537-3782 concerning the proposed pipeline impacts to nontidal wetlands and waterways.

Sincerely,

Elder A. Ghigiarelli, Jr.
Deputy Administrator
Wetlands and Waterways Program

Enclosures

cc: Joseph DaVia, U.S. Army Corps of Engineers
Joanne Wachholder, Project Manager, Federal Energy Regulatory Commission
Tressa Ellis, Tidal Wetlands Division, WWP
Elisha Wakefield, Nontidal Wetlands and Waterways Division, WWP

BEST MANAGEMENT PRACTICES FOR WORKING IN NONTIDAL WETLANDS, WETLAND BUFFERS, WATERWAYS, AND 100-YEAR FLOODPLAINS

1) No excess fill, construction material, or debris shall be stockpiled or stored in nontidal wetlands, nontidal wetland buffers, waterways, or the 100-year floodplain.
2) Place materials in a location and manner which does not adversely impact surface or subsurface water flow into or out of nontidal wetlands, nontidal wetland buffers, waterways, or the 100-year floodplain.
3) Do not use the excavated material as backfill if it contains waste metal products, unsightly debris, toxic material, or any other deleterious substance. If additional backfill is required, use clean material free of waste metal products, unsightly debris, toxic material, or any other deleterious substance.
4) Place heavy equipment on mats or suitably operate the equipment to prevent damage to nontidal wetlands, nontidal wetland buffers, waterways, or the 100-year floodplain.
5) Repair and maintain any serviceable structure or fill so there is no permanent loss of nontidal wetlands, nontidal wetland buffers, or waterways, or permanent modification of the 100-year floodplain in excess of that lost under the originally authorized structure or fill.
6) Rectify any nontidal wetlands, wetland buffers, waterways, or 100-year floodplain temporarily impacted by any construction.
7) All stabilization in the nontidal wetland and nontidal wetland buffer shall consist of the following species: Annual Ryegrass (Lolium multiflorum), Millet (Setaria italica), Barley (Hordeum sp.), Oats (Uniola sp.), and/or Rye (Secale cereale). These species will allow for the stabilization of the site while also allowing for the voluntary revegetation of natural wetland species. Other non-persistent vegetation may be acceptable, but must be approved by the Nontidal Wetlands and Waterways Division. **Kentucky 31 fescue shall not be utilized in wetland or buffer areas.** The area should be seeded and mulched to reduce erosion after construction activities have been completed.
8) After installation has been completed, make post-construction grades and elevations the same as the original grades and elevations in temporarily impacted areas.
9) To protect aquatic species, in-stream work is prohibited during the periods indicated in the Nontidal Wetlands and Waterways Permit and the Water Quality Certification for the project.
10) Stormwater runoff from impervious surfaces shall be controlled to prevent the washing of debris into the waterway.
11) Culverts shall be constructed and any riprap placed so as not to obstruct the movement of aquatic species, unless the purpose of the activity is to impound water.

Sample Letter For Notifying Contiguous Property Owners
for Projects in Tidal and Nontidal Wetlands, Waterways, and the 100-year Nontidal Floodplain

(Your Street Address)
(City, State, Zip Code)
(Phone Number)

(Date)
(Contiguous Property Owner's Name)
(Address)
(City, State, Zip Code)

Dear :
(Contiguous Property Owner's Name)

I have submitted an application to the Maryland Department of the Environment to obtain authorization to perform work in tidal and nontidal wetlands, waterways, and the 100-year nontidal floodplain at my property contiguous to yours. I propose to perform the following work:

(Describe project)

Please review the enclosed material and call me if you have any questions. If you would like to provide comments to the Maryland Department of the Environment, please send a letter to them at the following address within 14 days of receipt of this letter.

Maryland Department of the Environment
Wetlands and Waterways Program
1800 Washington Blvd., Ste. 430
Baltimore, MD 21230
410-537-3837

Sincerely,

(Your Signature)

(Your Printed Name)

Contiguous Property Owner and Appropriate Local Official Notification Certification Form

☐ I have notified and provided plans of my proposal to perform work in tidal and nontidal wetlands, waterways, and the 100-year nontidal floodplain to all property owners contiguous to my property located at the address listed below.

- ☐ In Person
- ☐ By Certified Mail

☐ I have notified and provided plans of my proposal to perform work in tidal and nontidal wetlands, waterways, and the 100-year nontidal floodplain to the Director of Planning in the County(s) in which my project is located:

- ☐ In Person
- ☐ By Certified Mail

Project Site Address

_____
(Name of Property Owner)

_____
(Project Site Street Address)

_____
(City, State, Zip Code)

Please list below all of the contiguous property owners notified. Attach additional pages if necessary.

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____

_____
(Signature)

_____
(Printed Name)

Maryland Department of the Environment
Water Management Administration
Wetlands and Waterways Program
1800 Washington Boulevard
Baltimore, Maryland 21230
(410) 537-3745

"A Commitment to Excellence in Managing Maryland's Water Resources"

PUBLIC NOTICE BILLING APPROVAL FORM

I agree to pay all expenses associated with the publishing of a public notice for the wetland application of _____ (Applicant's Name) which is dated _____.

_____
Applicant/Agent Signature

_____
Printed Name of Signee

Billing Address: _____
_____
_____
_____

Telephone No.: _____